



3. Defendants MarOpCo and E. Pierce Marshall, Jr. filed answers and appeared in the state court lawsuit. (App. 157-58, 266-70, 427-29, 1748-51, 2429-35.) Defendants Edwin K. Hunter and Hunter, Hunter & Sonnier, LLC filed a Special Appearance objecting to the state court's exercise of personal jurisdiction over them. (App. 419-26, 1030-36.) The state court denied Defendants Edwin K. Hunter and Hunter, Hunter & Sonnier, LLC's Special Appearance (App. 1721, 1723-25) and Edwin K. Hunter and Hunter, Hunter & Sonnier, LLC have appealed that order. Defendants Edwin K. Hunter and Hunter, Hunter & Sonnier, LLC subsequently filed an answer. (App. 2413-28.) Defendant Trof, Inc. filed a Special Appearance objecting to the state court's exercise of personal jurisdiction over them (App. 2445-71), but the state court has not yet ruled on Trof, Inc.'s Special Appearance (*see* App. 4.)

4. On August 12, 2016, which was the court-ordered deadline to file amended pleadings, Plaintiffs filed their Sixth Amended Verified Petition and Requests for Temporary and Permanent Injunction. (App. 1752-2412.) Plaintiffs' Sixth Amended Petition included a new claim pled against all Defendants: violation of the Computer Fraud and Abuse Act, 18 U.S.C. Section 1030. (App. 1790-91, ¶¶ 115-119.) Plaintiffs alleged a federal cause of action for the first time on August 12, 2016. (App. 1790-91, ¶¶ 115-119.)

5. Plaintiffs' Sixth Amended Petition also includes the following causes of action: wrongful discharge, breach of contract, tortious interference with existing contracts, tortious interference with business relationships and fiduciary duties, violation of privacy rights, conversion, trespass to chattel, violation of the Texas Harmful Access by Computer Act, misappropriation of trade secrets under the Texas Uniform Trade Secrets Act, breach of fiduciary duty, knowing participation in breach of fiduciary duty, fraud, fraudulent inducement, fraudulent concealment, fraud in a stock transaction, conspiracy, and defamation. (App. 178-96, 1799-

1800.) In addition to seeking monetary damages for the foregoing claims, Plaintiffs seek a declaratory judgment (App. 1796-99) and injunctive relief (App. 1801-05). Plaintiffs have demanded a jury trial. (*See* App. 22.)

6. Plaintiffs' Sixth Amended Complaint does not require a responsive pleading from any of the Defendants. Defendants MarOpCo, E. Pierce Marshall, Jr., Edwin K. Hunter, and Hunter, Hunter & Sonnier LLP have all filed answers in the state court action that include general denials of Plaintiffs' claims. (App. 157, 266, 427, 1748, 2413, 2421-22, 2429.) Under Texas Rule of Civil Procedure 92, "[w]hen the defendant has pleaded a general denial, and the plaintiff shall afterward amend his pleading, such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff." Tex. R. Civ. P. 92. In lieu of an answer and pursuant to Texas Rule of Civil Procedure 120a, Defendant Trof, Inc. filed a Special Appearance in response to Plaintiffs' Fifth Amended Petition to challenge the state court's exercise of personal jurisdiction over it. (*See* App. 2445-71.)

7. MarOpCo has asserted counterclaims for breach of contract, breach of fiduciary duty, constructive fraud, constructive trust, breach of duty of loyalty, conversion, misappropriation of trade secrets, violation of the Computer Fraud and Abuse Act, harmful access by computer, and trespass. (App. 1052-61.)

## **II. JURISDICTION**

8. This Court has original jurisdiction over this matter because Plaintiffs' Sixth Amended Petition invoked federal question jurisdiction.

9. Plaintiffs assert that Defendants violated the Computer Fraud and Abuse Act, 18 U.S.C. Section 1030, which is a federal law that creates a civil cause of action. *See Fiber Sys.*

*Int'l, Inc. v. Roehrs*, 470 F.3d 1150, 1156 (5th Cir. 2006) (holding that the Computer Fraud and Abuse Act, though a criminal statute, creates a private civil cause of action).

10. Specifically, Plaintiffs allege in relevant part that Defendant E. Pierce Marshall, Jr., “acting in his individual capacity and as general counsel of MarOpCo, permitted and/or caused the Hunter Parties (also acting for their own benefit) to access, obtain information, copy, take/steal, and image Plaintiffs’ secure computer system and databases.” (App. 1791, ¶ 117.) Plaintiffs further allege that the “access and control was intentional, willful, and without Plaintiffs’ consent.” (App. 1791, ¶ 117.) Plaintiffs contend that their computer systems were “‘protected computers’ as defined in 18 U.S.C. § 1030(e)(2)(B)” and that “Defendants violated 18 U.S.C. §§ 1030(a)(2)(C) and 1030(a)(5)(C).” (App. 1791, ¶¶ 117-118.)

11. This Court has federal question jurisdiction over the dispute since the face of Plaintiffs’ Sixth Amended Petition demonstrates that Plaintiffs’ Computer Fraud and Abuse Act claim is created by and therefore arises under federal law. *See, e.g., Willis of Tex., Inc. v. Stevenson*, No. H-09-CV-0404, 2009 WL 7809247, at \*5 (S.D. Tex. May 26, 2009) (holding that the Computer Fraud and Abuse Act vested the district court with federal question jurisdiction); *see also Ennis Transp. Co. Inc. v. Richter*, No. 3:08-CV-2206-B, 2009 WL 464979, at \*1 (N.D. Tex. Feb. 24, 2009) (same). Accordingly, the state court action is properly removed to this Court.

12. Plaintiffs’ state law claims and MarOpCo’s counterclaims are also subject to removal under 28 U.S.C. Section 1367(a) because the claims all derive from a common nucleus of operative fact and are so related to Plaintiffs’ federal claim that they form part of the same case or controversy. *See* 28 U.S.C. § 1367(a); *Mendoza v. Murphy*, 532 F.3d 342, 346 (5th Cir. 2008) (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)).

13. At their core, all of Plaintiffs' claims and MarOpCo's counterclaims stem from Plaintiff Preston Marshall's employment with MarOpCo and the termination of that employment. (*See* App. 1762-1805; App. 1044-61.) Plaintiffs' claim for violation of the Computer Fraud and Abuse Act arises from Defendants' alleged actions in connection with Plaintiff Preston Marshall's termination of employment, as Plaintiffs allege that Plaintiffs' property, including their computer equipment, was immediately seized when Preston Marshall was terminated and then wrongfully copied and accessed. (App. 1771-74.)

### **III. PROCEDURAL REQUIREMENTS**

14. This action is properly removed to this Court because the state court action is pending within this district and division. 28 U.S.C. §§ 1441(a), 124(b)(2).

15. Plaintiffs filed their federal claim on August 12, 2016 through their Sixth Amended Petition. (App. 1752, 1790-91, 1808.) Thus, Defendants received "an amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has become removable" on August 12, 2016. 28 U.S.C. § 1446(b)(3). Removal is thus timely because MarOpCo filed this Notice of Removal within thirty days after MarOpCo received notice that the case was one which had become removable. *See* 28 U.S.C. § 1446(b).

16. As required by 28 U.S.C. § 1446(a) and Local Rule 81 of the United States District Court for the Southern District of Texas, MarOpCo has attached the following to this Notice of Removal: (1) all executed process in the case; (2) all pleadings asserting causes of action and all answers to such pleadings; (3) all orders signed by the state judge; (4) the state court docket sheet; (5) an index of matters being filed; and (6) a list of all counsel of record, including addresses, telephone numbers, and parties represented. (*See generally* App.)

17. As required by 28 U.S.C. Section 1446(d), almost immediately after the filing of this Notice of Removal, MarOpCo will file notice of this Notice of Removal in the 11th Judicial District Court of Harris County, Texas and provide all Plaintiffs and Defendants with copies of this Notice of Removal, the exhibits to this Notice of Removal, and the notice filed with the state court.

18. All Defendants consent to the removal of the state court action to federal court. Defendants E. Pierce Marshall, Jr., Edwin K. Hunter, Hunter, Hunter & Sonnier, LLP, and Trof, Inc. will separately file their consents to removal.

#### **IV. CONCLUSION**

Defendant MarOpCo removes this action from the 11th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division so that the Court may assume jurisdiction over the case as provided by law.

Dated: September 9, 2016

Respectfully submitted,

/s/ John T. Cox III

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**CERTIFICATE OF SERVICE**

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